

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

HAITHAM SHALASH,
Petitioner,

Case No. 1:16-cv-451

vs.

Black, J.
Litkovitz, M.J.

WARDEN, NOBLE
CORRECTIONAL INSTITUTION,
Respondent.

ORDER

Petitioner, an inmate in state custody at the Noble Correctional Institution in Caldwell, Ohio, has filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (*See* Doc. 1). The respondent has filed a motion to dismiss the petition, which is opposed by the petitioner. (*See* Docs. 10, 13).

In this case, petitioner is challenging the judgment of conviction and sentence entered by the Warren County, Ohio, Court of Common Pleas upon the petitioner's entry of a guilty plea to charges of aggravated trafficking in "controlled substance analogs" and one count of engaging in a pattern of corrupt activity. (*See* Doc. 1; *see also* Doc. 9, Exs. 1, 6-7). It appears from the record that the charges "arose out of allegations that on January 18, 2012, and February 13, 2012, [petitioner] and a co-defendant, Ha[mz]a Shalash, sold 'designer' or 'synthetic' drugs that were substantially similar to controlled substances out of a local gas station." (*See* Doc. 9, Ex. 19, ¶2, at PAGEID#: 154). Hamza Shalash, was separately convicted and sentenced and is currently pursuing relief in the state courts on the claim that the sale of controlled substance analogs was not criminalized at the time he and his brother sold them. Although the Ohio Court of Appeals rejected that claim, *see State v. Shalash*, 41 N.E.3d 1263, 1265-66 (Ohio Ct. App. 2015), the

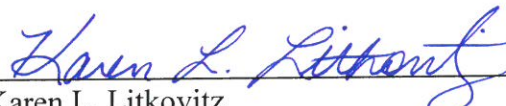
matter is now pending before the Ohio Supreme Court, which accepted the appeal for the purpose of deciding a conflict between the Twelfth and Tenth Appellate Districts on the issue of whether controlled substance analogs were criminalized as of the October 17, 2011 effective date of House Bill 64, or in December 2012 when the Ohio General Assembly added “controlled substance analog” to Ohio Rev. Code §§ 2925.03(A) and 2925.01(A). *See id.* at 1266-69; *see also State v. Shalash*, No. 2015-1782 (Ohio). The Ohio Supreme Court heard oral arguments on August 30, 2016, but at this point in time, has yet to issue a decision in the matter.

In this action, petitioner has raised grounds for federal habeas relief which rely on the same claim that is currently pending before the Ohio Supreme Court in his brother’s appeal. The Ohio Supreme Court’s resolution of the underlying state-law issue as to when “controlled substance analogs” were criminalized is critical for determining whether respondent’s motion to dismiss should be granted or denied.

Therefore, it is hereby **ORDERED** that ruling on the respondent’s motion to dismiss (Doc. 10) is **STAYED** pending the Ohio Supreme Court’s disposition of the certified question in *State v. Shalash*, No. 2015-1782 (Ohio). It is **FURTHER ORDERED** that respondent shall immediately notify this Court when the Ohio Supreme Court has issued a decision on the certified question, as well as provide the Court with a copy of that decision, so that this matter may proceed.

IT IS SO ORDERED.

Date: 12/1/16



Karen L. Litkovitz
United States Magistrate Judge